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E.O. 11652: GDS
TAGS: PLOS
SUBJECT: LOS CONFERENCE DAILY SUMMARY - SEPTEMBER 5, 1978

SUMMARY: NG-1 CONTINUED DISCUSSION OF PARAGRAPH 5 (ANNEX II) WITH OPPOSITION VOICED TO AWARDED CONTRACTS ON A "FIRST-COME, FIRST SERVED" BASIS. THE US STRESSED THE NEED FOR CONCRETE STANDARDS IN THE AWARDED OF CONTRACTS. IN NG-2, MINISTER EVENSEN (NORWAY) PROPOSED A \$500,000 APPLICATION FEE WITH REFUND OF MONIES NOT USED FOR EVALUATING AN APPLICATION. NG-3 DISCUSSED A REDRAFT OF ARTICLE 160 THROUGH 163, DEALING WITH THE COUNCIL AND ORGANS OF THE COUNCIL. IN AN INFORMAL MEETING OF COMMITTEE II, SEVERAL ISSUES (INCLUDING JURISDICTION OVER ILLICIT NARCOTICS TRAFFIC, CONSERVATION OF MARINE MAMMALS, AND THE REGIME OF ISLANDS (ARTICLE 121)) WERE DISCUSSED. IN NG-7, THERE WAS AN INCONCLUSIVE DEBATE ON AN INTERIM REGIME FOR MARITIME BOUNDARY DELIMITATION; DISPUTE SETTLEMENT WILL RESUME SEPTEMBER 8. THE DRAFTING COMMITTEE AND LINGUISTIC GROUPS CONTINUED THEIR WORK. END SUMMARY.

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1. NG-1 CONTINUED DISCUSSION OF PARAGRAPH 5 (ANNEX II) CONCENTRATING ON SUBPARAGRAPH (G), WHICH DEALS WITH THE SELECTION AMONG COMPETING APPLICANTS FOR CONTRACTS. THE FRG, SPEAKING FOR THE EEC, PROPOSED USING A "FIRST-COME, FIRST-SERVED" (FCFS) BASIS AS A MAJOR CRITERION FOR SELECTION OF A CONTRACTOR. THE USSR OBJECTED TO PREFERENCE (IN THE PRESENT TEXT) FOR APPLICANTS WILLING TO

ENTER JOINT VENTURES WITH THE ENTERPRISE. THE SOVIETS, HOWEVER, WERE PREPARED TO AGREE TO THE RETENTION OF THE PRESENT TEXT WITH A CLARIFICATION THAT THERE SHOULD BE NO DISCRIMINATION AGAINST SOCIALIST STATES CAUSED BY DIFFICULTIES THEY WOULD EXPERIENCE IN ADVOCATING JOINT VENTURES. THE US STRESSED THE NEED TO DRAFT CONCRETE STANDARDS TO BE FOLLOWED BY THE AUTHORITY IN RESOLVING CONFLICTS AND STATED THAT TWO PROVISIONS (WILLINGNESS TO ENTER JOINT VENTURES WITH THE ENTERPRISE AND APPLICATION OF A QUOTA/ANTI-MONOPOLY PROVISION ON A NATIONAL BASIS) WOULD CAUSE THE US GREAT DIFFICULTY.

2. MOST G-77 INTERVENTIONS WERE ALONG PREDICTABLE LINES, REJECTING FCFS AND STRESSING THE NEED TO GIVE THE AUTHORITY BROAD DISCRETION IN RESOLVING CONFLICTS AMONG APPLICANTS. INDIA RECOGNIZED A NEED FOR MORE SPECIFICITY IN OUTLINING CRITERIA APPLIED BY THE AUTHORITY BUT REJECTED FCFS. TRINIDAD-TOBAGO SUGGESTED A SELECTION BY LOTS, ALL THINGS BEING EQUAL, IF THE AUTHORITY COULD NOT DECIDE UPON A CONTRACTOR. THIS WAS OPPOSED BY TANZANIA, WHICH ADVANCED "POLITICAL FACTORS" (SUCH AS FOREIGN AID LEVELS) TO HELP SELECT AMONG APPLICANTS. CANADA RESTATED ITS PREFERENCE FOR A TWO-STAGE CONTRACTING SYSTEM UNDER WHICH PROBLEMS OF SELECTION FOR CONTRACTS AFFECTED BY THE PRODUCTION CEILING WOULD BE LESS SEVERE. THIS POSITION ENGENDERED INTERVENTIONS BY PAKISTAN
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AND INDIA BOTH OF WHICH STATED THAT THE NEGOTIATIONS UP TO NOW HAD ASSUMED COMBINED EXPLORATION/EXPLOITATION CONTRACTS. IF THE NORMAL PROCEDURE IS TO BE SEPARATE STAGES, BOTH WARNED THAT CONSIDERABLE ATTENTION WOULD HAVE TO BE GIVEN IN BOTH NG-1 AND NG-2 TO PROVISIONS CONCERNING THE EXPLOITATION PHASE.

3. NG-3 RECEIVED A FINANCIAL ARRANGEMENTS PROPOSAL FROM MINISTER EVENSEN (NORWAY). IN HIS INTERVENTION, EVENSEN STATED THAT EARLIER PROPOSALS (LIKE THE INDIAN AND NORWEGIAN ONES) WERE UNREALISTIC WHEN JUDGED BY THE MIT MODEL, WHICH EVENSEN BELIEVES IS THE MOST SCIENTIFIC STANDARD AT THIS TIME. IN THE SPIRIT OF COMPROMISE, EVENSEN PRESENTED HIS PROPOSAL WHICH HE FEELS IS POLITICALLY AND ECONOMICALLY REALISTIC. IT CALLS FOR: A \$500,000 APPLICATION FEE WITH REFUND OF MONIES NOT USED FOR EVALUATING THE APPLICATION; AN ANNUAL FEE OF ONE MILLION DOLLARS CREDITABLE AGAINST PRODUCTION CHARGES AFTER PRODUCTION STARTS; A PRODUCTION CHARGE OF 2 PERCENT OF THE VALUE OF THE PROCESSED METALS (FOR THE FIRST 10 YEARS OF PRODUCTION AND 4 PERCENT FOR REMAINING YEARS); AN ATTRIBUTABLE NET PROCEEDS FIGURE OF 40 PERCENT; AND PROFIT

SHARING WHICH AMOUNTS TO 40 PERCENT OF THAT 40 PERCENT FOR THE FIRST 10 YEARS AND 75 PERCENT OF THAT 40 PERCENT FOR THE REMAINING YEARS). EVENSEN ALSO PROPOSED A ROYALTY-ONLY SYSTEM OF 7 1/2 PERCENT OF THE VALUE OF THE PROCESSED METALS FOR THE FIRST 10 YEARS OF PRODUCTION AND 13 PERCENT FOR THE REMAINING YEARS.

4. AMBASSADOR KOH WARMLY PRAISED EVENSEN'S INITIATIVE WHILE MOST DELEGATIONS RESERVED COMMENT. THE US RESERVED COMMENT EXCEPT FOR ASPECTS WHICH WERE NOT NEW AND HAD ALREADY BEEN CRITICIZED BY THE U.S. BRIEFLY, THESE CRITICISMS WERE:

A) THE US OPPOSES ANNUAL FEES BECAUSE THEY SERVE NO
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LEGITIMATE PURPOSE.

B) THERE IS NO NEED FOR THE PRODUCTION CHARGE TO INCREASE TO 4 PERCENT IN THE REMAINING YEARS OF PRODUCTION BECAUSE AT THAT TIME PROFIT SHARING REVENUES WOULD BE COMING INTO EFFECT.

C) THE ATTRIBUTABLE NET PROCEEDS FIGURE OF 40 IS TOO HIGH AND IS NOT RATIONALLY JUSTIFIABLE; HOWEVER, THE US FIGURE OF 20 IS JUSTIFIED.

D) THE FLAT RATE OF PROFIT SHARING SHOULD BE GRADATED IN ORDER TO TAKE INTO ACCOUNT DIFFERENCES BETWEEN MARGINAL AND HIGHLY PROFITABLE PRODUCERS.

5. THE US ADDED THAT ALTHOUGH EVENSEN'S PROPOSAL WAS NOT ACCEPTABLE FOR THE STATED REASONS, IT WAS A STEP IN THE RIGHT DIRECTION, AND HE SHOULD BE GIVEN CREDIT FOR ATTEMPTING A COMPROMISE ON THIS DIFFICULT MATTER.

6. IN OTHER NG-2 DEVELOPMENTS, US DELEGATION REPRESENTATIVES MET WITH THE SOVIETS SEPTEMBER 5 AND IT WAS AGREED
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THAT THE USSR WOULD NOT RAISE ITS ROYALTY-ONLY PROPOSAL IN ORDER TO COMPETE WITH THE NEW NORWEGIAN INITIATIVE.

7. THERE ALSO WAS SOME FEEDBACK FROM OTHER DELEGATES ON THE NEGATIVE REMARKS BY THOMPSON-FLORES (BRAZIL) REGARDING NG-2 (SENT IN SEPTEMBER 5 DAILY REPORT). THE ARGENTINE DELEGATE SAID THAT THOMPSON-FLORES' STATEMENT REFLECTED THE BRAZILIAN'S OWN "PERSONAL PROBLEMS." AN AUSTRALIAN DELEGATE BELIEVED THAT THOMPSON-FLORES WAS SAYING IN A PRIVATE CONTEXT WHAT HIS INSTRUCTIONS FORBADE HIM TO STATE IN A PUBLIC FORUM.

8. NG-3 REVIEWED IN SOME DETAIL A DRAFT PROPOSAL FOR CONSOLIDATION AND RESTRUCTURING OF SUBSIDIARY ORGANS OF THE COUNCIL (ARTICLE 161-163, PLUS A FEW ADDITIONS TO ARTICLE 160). THE DEBATE CENTERED ON ALTERNATIVES PRESENTED BY ENGO (SUCH AS WHETHER THERE WOULD BE TWO OR THREE COMMISSIONS OR AN AMALGAMATION, A CLEARER STATEMENT OF FUNCTIONS, ETC.). THE CHAIRMAN EXPLAINED THAT THE PRELIMINARY DRAFT CONTAINED ERRATA AND HE WOULD ISSUE A NEW VERSION. DISCUSSION WAS EXPECTED ON THE QUESTION OF RELATIONSHIP OF THE ASSEMBLY AND COUNCIL (ARTICLES 158 AND 160) BUT, EXCEPT FOR A FEW REFERENCES, THIS SUBJECT WAS POSTPONED UNTIL A LATER MEETING. ENGO ALSO WISHED TO PUT OFF CONSIDERATION OF ARTICLE 160 (2) (X), ALTHOUGH A FEW DEVELOPING COUNTRIES PERSIST IN RAISING THE MATTER.

9. NG-4 (LL/GDS ACCESS TO FISH IN THE ECONOMIC ZONE OF OTHER STATES) - IN THIS FIRST MEETING OF NG-4 AT THE RESUMED SESSION, CHAIRMAN NANDAN EXPLAINED THAT THE NEED FOR REFLECTION ON HIS COMPROMISE PROPOSAL OF THE GENEVA SESSION (NG-4/9 REV. 2) AND THE NEED FOR PROGRESS

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ON OTHER SUBJECTS UNDER NEGOTIATION WERE THE REASONS THAT NO NG-4 MEETINGS WERE HELD UNTIL THIS DATE. HE THOUGHT IT MIGHT BE COUNTERPRODUCTIVE TO LAUNCH INTO INTENSE CONSULTATIONS AT THIS TIME AND NOTED THAT HE WAS IN CONTACT WITH THE CHAIRMAN OF THE LL/GDS AND COASTAL STATE GROUPS. POLAND AND UGANDA INDICATED THEIR HOPE THAT THE SUBJECT MIGHT BE CONSIDERED AT A FUTURE MEETING THIS SESSION. THESE TWO COUNTRIES WERE SURPRISINGLY MODERATE IN APPROACH AND NG-4 ADJOURNED WITHOUT FURTHER INTERVENTIONS.

10. INFORMAL MEETING OF COMMITTEE II - DISCUSSION
CONTINUED ON VARIOUS ICNT ARTICLES WITH A VIEW TO COMPLETING AGUILAR'S LONG MARCH THROUGH THE TEXT. ISRAEL SUGGESTED AN AMENDMENT TO ARTICLE 109 (TO THE EFFECT THAT PIRATE BROADCASTING SHOULD BE DELETED FROM THE HIGH SEAS SECTION AND PUT IN THE CONTIGUOUS ZONE SECTION). IT FELT THAT THE COASTAL STATE SHOULD NOT HAVE COMPETENCE OVER THIS MATTER TO GREAT DISTANCES OFFSHORE AND SUGGESTED A CONSEQUENTIAL AMENDMENT DELETING PARAGRAPH (C) OF ARTICLE 110, PARAGRAPH 1. THERE WAS NO COMMENT ON EITHER OF THESE SUGGESTIONS.

11. PERU SUGGESTED ADDING ILLICIT NARCOTICS TRAFFIC TO UNIVERSAL JURISDICTION UNDER ARTICLE 110, AND WAS SUPPORTED BY AUSTRALIA, THE UAE, URUGUAY, ARGENTINA, ECUADOR, EL SALVADOR* TURKEY, AND COSTA RICA. THE US, WHILE APPRECIATING THE CONCERNS THAT PROMPTED PERU, INQUIRED ABOUT THE RELATIONSHIP OF THE PROPOSAL TO THE SINGLE CONVENTION ON NARCOTICS AND RECEIVED A NONANSWER FROM PERU. (COMMENT: THIS AMENDMENT CANNOT BE VIEWED IN ISOLATION, BUT MUST BE SEEN IN RELATIONSHIP TO OTHER PERUVIAN AMENDMENTS TO DISTINGUISH THE HIGH SEAS FROM THE ECONOMIC ZONE AND TO GIVE A ROLE TO THE COASTAL STATE IN THE NON-RESOURCE ACTIVITIES OF OTHER STATES IN THEIR ZONE. END COMMENT)
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12. INDONESIA PROPOSED A TECHNICAL ADDITION TO ARTICLE 111, PARAGRAPH 1, TO THE EFFECT OF ADDING "ARCHIPELAGIC WATERS" BETWEEN "INTERNAL WATERS" AND "TERRITORIAL SEA." THEY WERE SUPPORTED IN THIS REGARD BY THE PHILIPPINES, UAE, USSR, AND URUGUAY.

13. PERU ALSO SUGGESTED AN AMENDMENT TO ARTICLE 111, PARAGRAPH 7 (TO ADD THE PHRASE "OF ANOTHER STATE" AFTER THE WORDS "EXCLUSIVE ECONOMIC ZONE"), AND WAS SUPPORTED BY ECUADOR AND URUGUAY.

14. PERU OFFERED A CHANGE TO ARTICLE 119 REGARDING LIVING RESOURCES TO THE EFFECT THAT STATES SHOULD REVIEW SUCH MEASURES TO ENSURE THEIR EFFECTIVENESS. IT ALSO SUGGESTED ADDING TO PARAGRAPH 2 THE NEED FOR "TIMELY" EXCHANGE OF INFORMATION. THESE AMENDMENTS WERE SUPPORTED BY ECUADOR, URUGUAY, UAE, EL SALVADOR, TURKEY, AND THE PHILIPPINES.

15. THE US COMMENCED DISCUSSION OF ARTICLE 120 BY STRESSING THE NEED TO PROTECT AND CONSERVE MARINE MAMMALS. THE US STRESSED THE PROMINENCE WHICH
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ALL COUNTRIES HAVE GIVEN TO THEIR SPECIAL STATUS AND THE DESIRABILITY OF HAVING A SEPARATE ARTICLE ON THIS SUBJECT. THE US MADE CLEAR THAT IT WAS SUGGESTING A CLARIFICATION THAT ARTICLE 61 APPLIES AS THE MINIMUM CONSERVATION STANDARD AND THAT COASTAL STATES OR THE

INTERNATIONAL ORGANIZATION MAY SET MORE STRINGENT STANDARDS. THE US ALSO INDICATED THAT NOTE SHOULD BE MADE THAT AN INTERNATIONAL ORGANIZATION BE RESPONSIBLE FOR PROTECTING AND CONSERVING MARINE MAMMALS. BOTH OF THESE AMENDMENTS COULD BE ACCOMPLISHED WITH MINOR MODIFICATIONS TO THE PRESENT TEXT. THE US INDICATED IT WAS IN THE PROCESS OF CONSULTING WITH OTHER NATIONS IN ORDER TO GAIN ACCEPTANCE FOR ITS AMENDMENTS (WHICH WERE NOT GENERALLY DISTRIBUTED). (COMMENT: THE SOVIETS WERE RECEPTIVE TO THE REVISION AND SUGGESTED MODEST CHANGES, SO THAT THE PROPOSAL NOW READS AS FOLLOWS: "NOTHING IN THE PRESENT CONVENTION RESTRICTS THE RIGHT OF A COASTAL STATE OR THE COMPETENCE OF AN INTERNATIONAL ORGANIZATION, AS APPROPRIATE, TO PROHIBIT OR MORE STRICTLY REGULATE OR LIMIT THE EXPLOITATION OF MARINE MAMMALS. STATES SHALL COOPERATE WITH A VIEW TO THE CONSERVATION OF MARINE MAMMALS THROUGH AN INTERNATIONAL ORGANIZATION FOR THE CONSERVATION AND STUDY OF MARINE MAMMALS." END COMMENT). JAPAN HAD NO, REPEAT NO, OBJECTION TO DISCUSSIONS BY INTERESTED STATES. URUGUAY, PAKISTAN, CHILE, AND PERU ALL WERE WILLING TO DISCUSS THE ISSUE. WHILE NOTING THEIR PROBLEMS WITH THE COMPETENCE OF AN INTERNATIONAL ORGANIZATION IN THE EEZ. THE UK SUPPORTED THE US.

16. THERE FOLLOWED A LONG DISCUSSION OF AMENDMENTS TO ARTICLE 121 ON THE REGIME OF ISLANDS. LIBYA, WITH
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NINE CO-SPONSORS, SUGGESTED A NEW PARAGRAPH TO GIVE ISLANDS, WHICH, BECAUSE OF THEIR GEOGRAPHICAL LOCATION, CAUSE DISTORTION OR INEQUITY IN DRAWING BOUNDARIES, ONLY MARINE SPACES TO THE EXTENT COMPATIBLE WITH EQUITABLE PRINCIPLES. THEY WERE SUPPORTED BY MOROCCO, TURKEY, ARGENTINA, ALGERIA, MADAGASCAR: POLAND, AND ROMANIA. JAPAN SUGGESTED DELETING PARAGRAPH 3 OF ARTICLE 121 REGARDING ROCKS. THEY WERE SUPPORTED BY ECUADOR, SEYCHELLES, FRANCE, VENEZUELA, CHILE, BAHRAIN, UK, AND GREECE. THEY WERE OPPOSED BY IRELAND, ROK, ICELAND, AND THE GDR. THE ICNT ARTICLE WAS SUPPORTED IN ITS ENTIRETY BY IRELAND (ALTHOUGH IT COULD LINK THE ARTICLE TO THE DELIMITATION PROVISION IN THE CONVENTION), SAMOA, COLOMBIA, MALTA, NEW ZEALAND (BUT IF SUBJECT IS OPENED THEY WOULD SUPPORT JAPAN), MAURITIUS (SAME AS NEW ZEALAND), AUSTRALIA (SAME AS NEW ZEALAND), FIJI (SAME AS NEW ZEALAND), CYPRUS (SAME AS NEW ZEALAND), AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS (TTPI).

17. NG-7 COMPLETED ITS LIST OF SPEAKERS ON THE INTERIM REGIME FOR MARITIME BOUNDARY DELIMITATION. THE DISCUSSION WAS INCONCLUSIVE, HOWEVER. DESPITE THE ABSENCE OF ANY FURTHER REQUESTS FOR THE FLOOR, JUDGE MANNER (FINLAND) RULED THAT DEBATE ON THE POINT WOULD REMAIN OPEN THROUGH THE SEPTEMBER 6 MEETING OF THE GROUP. HE URGED THOSE WHO HAVE NOT YET EXPRESSED AN OPINION TO DO SO AT THAT TIME. ON SEPTEMBER 8, THE GROUP WILL HAVE BEFORE IT THE SECRETARIAT SURVEY OF DELIMITATION AGREEMENTS AND ARBITRATIONS, AND WILL RESUME THE DISPUTE SETTLEMENT DISCUSSIONS. THE LAST WEEK OF THE SESSION WILL BE DEVOTED TO A DEBATE ON THE SUBSTANTIVE CRITERIA FOR DELIMITATION.

18. MANNER OPENED WITH THE OBSERVATION THAT AN EXPLOITATION MORATORIUM PENDING FINAL DELIMITATION SEEMED TO HAVE GAINED SUPPORT AT THE PREVIOUS MEETING. HE SUGGESTED THAT

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THE GROUP CONSIDER SPECIFIC ACTIVITIES WHICH MIGHT BE THE

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SUBJECT OF A MORATORIUM, SUCH AS EXPLOITATION OF NON-LIVING RESOURCES. HOWEVER, SEPTEMBER 6TH'S 16 SPEAKERS OVERWHELMINGLY OPPOSED THE WHOLE IDEA OF A COMPULSORY MORATORIUM, AND, THEREFORE, NEVER GOT TO SPECIFICS.

TWELVE DELEGATIONS, INCLUDING BOTH REPRESENTATIVES OF THE EQUITY AND THE EQUIDISTANCE POSITIONS, SPOKE AGAINST AN IMPOSED MORATORIUM. THESE WERE GREECE, ARGENTINA, PORTUGAL, MALTA, BAHRAIN, VIETNAM, UNITED KINGDOM, COLOMBIA, UKRANIAN SSR, ROMANIA, INDONESIA, AND UNITED ARAB EMIRATES. INTERVENTIONS BY SWEDEN AND SIERRA LEONE WERE UNCLEAR ON THE POINT. ONLY IRAQ AND PAKISTAN EXPRESSED UNAMBIGUOUS SUPPORT FOR THE IDEA.

19. THE DELEGATIONS SEEMED TO BE AGREED ON THE NEED TO HAVE A PROVISION ON INTERIM MEASURES IN THE CONVENTION. APART FROM THIS THRESHOLD UNDERSTANDING, THE ONLY COMMON GROUND IS THE PRINCIPLE THAT PROVISIONAL ARRANGEMENTS SHOULD NOT PREJUDICE THE FINAL DELIMITATION.

20. THE DRAFTING COMMITTEE AND LINGUISTIC GROUPS MET AND CONTINUED WORK ON THE INFORMAL SECRETARIAT PAPERS. THE AVAILABILITY OF THE ICNT IN CHINESE COMPLETES THE SET FOR CONFIDENTIAL

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ALL SIX OFFICIAL LANGUAGES. A COLLATED PACKAGE OF GUIDE-LINES ON THE INTERNAL REFERENCE PAPERS SHOULD BE READY THIS WEEK, AS WELL AS ONE FOR THE SPECIFIC PREFERENCES OF THE GROUPS ON THE RECURRING PHRASES AND CLAUSES PROBLEM.
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